



Making the complex clear

The rights of UK and EU financial services firms before and after the end of the Brexit transition period

February 2021

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Introduction

The following tables set out a brief summary of what has happened to the rights the UK and EU27 financial services firms had under passporting and what has replaced them.

For further discussion of these issues, see our client briefings:

- [Financial Services and the Trade and Co-operation Agreement FAQs](#)
- [The UK-EU trade deal and the end of the Brexit transitional period: things asset management firms should think about](#)
- [Ten things for asset managers to note about the end of the transitional period](#)
- [Ten further things for asset managers to note about the end of the transitional period](#)
- [Making the complex clear – The UK and EU draft FTAs and the final TCA compared](#)





Rights UK firms had before the end of the Brexit transitional period and what they have now

Right	Before the end of the Brexit transitional period ("TIP")	Now	Comment
Passporting	Available in all EU27 states.	No longer available.	When passporting was available prior to the end of the TIP, UK financial services firms which were authorised in the UK were permitted to conduct the same authorised activities in EU27 member states subject to notifying the national competent authorities.
Establishment	Available in all EU27 states.	Available in all EU27 states.	The free movement of capital and the right of UK persons to establish businesses on the same terms as EU27 persons in the EU27 (and vice versa) is enshrined in the Trade and Co-operation Agreement (" TCA "). However, unlike under passporting, a UK financial services firm which establishes in an EU27 state now must fully comply with the same authorisation processes as a local firm establishing in that state.
Marketing	Available in all EU27 states.	Available in some EU27 member states under national private placement regimes (" NPPR ").	There is no EU wide provision for UK financial services firms to continue marketing in the EU, however, some, but not all EU27 member states have NPPR. Those which do have NPPR have differing regimes which they apply with varying degrees of strictness. In order to pursue recognition under NPPR, each EU27 member state must be considered individually and local law advice sought.
Distribution	Available in all EU27 states.	Available in some EU27 member states under NPPR.	There is no EU wide provision for UK financial services firms to continue to distribute in the EU, however, some, but not all EU27 member states have NPPR. Those which do have NPPR have differing regimes which they apply with varying degrees of strictness. In order to pursue recognition under NPPR, each EU27 member state must be considered individually and local law advice sought.

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Right	Before the end of the Brexit transitional period ("TIP")	Now	Comment
Servicing existing contracts	Available in all EU27 states.	For the most part, not permitted in EU27 member states, subject to limited exceptions.	<p>There is no EU wide provision for UK financial services firms to continue to service pre-existing contracts with EU domiciled persons. UK financial services firms can continue to service contracts to the extent that servicing those contracts does not involve undertaking regulated activities. Some EU27 member states have put in place transitional arrangements which permit UK financial services firms to continue to service existing contracts in limited circumstances for a limited period.</p> <p>See our Financial Services Brexit tracker, "Helping you through changing times – Our European Brexit tracker for financial services institutions".</p>
Reverse solicitation	Available in respect of approaches from persons domiciled in all EU27 states.	Available in respect of approaches from persons domiciled in all EU27 states.	<p>While reverse solicitation continues to be available in respect of approaches from persons domiciled in all EU27 member states, national competent authorities ("NCAs") may take a fair amount of convincing that reverse solicitation is genuine while ESMA has issued a statement warning UK financial services firms not to engage in "questionable practices" around reverse solicitation.</p> <p>See our client briefing, "ESMA statement on UK firms relying upon reverse solicitation for the provision of services to current and potential EU clients".</p>
Fly in, fly out for conducting business	Available in all EU27 states.	May be available depending upon the EU27 state and business activity in question.	<p>UK financial services firms seeking to send staff to EU27 member states on business should seek advice before doing so to ensure that their activities are permitted. Both the general business travel rules of the EU27 member state to be visited and its restrictions on regulated financial services activities should be taken into account when planning business trips.</p>



Rights EU firms had before the end of the Brexit transitional period and what they have now

Right	Before the end of the Brexit transitional period	Now	Comment
Passporting	Available in the UK.	No longer available.	When passporting was available prior to the end of the TIP, EU27 financial services firms which were authorised in an EU27 member state were permitted to conduct the same authorised activities in the UK subject to notifying the FCA or PRA.
Establishment	Available in the UK.	Available in the UK.	The free movement of capital and the right of EU27 persons to establish businesses on the same terms as UK persons in the UK (and vice versa) is enshrined in the Trade and Co-operation Agreement (" TCA "). However, unlike under passporting, an EU27 financial services firm which establishes in the UK now must fully comply with the same authorisation processes as a UK firm.
Marketing	Available in the UK.	Available to EU27 firms in the Temporary Marketing Permission Regime (" TMPR "). EU27 firms not in the TMPR may be able to take advantage of section 272 FSMA 2000 or the exceptions in the Financial Promotions Order (" FPO ").	<p>EU27 firms which gave notice of their intention to participate in the TMPR prior to the end of the TIP are able to continue marketing as before. When their landing slot falls due, they must make a section 272 application. If successful they will subsequently market under section 272. If they are not successful or do not make an application they must cease to market.</p> <p>EU27 firms which are not in the TMPR but want to begin marketing in the UK may apply under section 272 to do so and, if successful, can then market in the UK on that basis. EU27 firms which want to market to investment professionals and high net worth companies may be able to do so under the exceptions in the FPO. UK advice should be taken before making an application under section 272 or seeking to rely on the exceptions in the FPO.</p>

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Right	Before the end of the Brexit transitional period	Now	Comment
Distribution	Available in the UK.	Available to EU27 firms in the Temporary Permission Regime (" TPR "). EU27 firms not in the TPR may be able to take advantage of other UK regimes including the Overseas Persons Exclusion (" OPE ").	<p>EU27 firms which gave notice of their intention to participate in the TPR prior to the end of the TIP are able to continue operating as before. When their landing slot falls due, they must apply for full UK authorisation. If successful they will subsequently operate under that authorisation. If they are not successful or do not make an application they must cease to operate.</p> <p>EU27 firms which are not in the TPR but want to begin operating in the UK may be able to do so under the OPE, which permits non-UK persons to undertake certain financial services activities in the UK. The OPE rules are complex and EU27 firms should take UK advice before relying upon them.</p>
Servicing existing contracts	Available in the UK.	Available to EU27 firms under the Financial Services Contract Regime (" FSCR ").	All EU27 firms which entered into contracts with UK domiciled persons prior to the end of the TIP are entitled under the FSCR to service those contracts (but not write new business) for a period of 5 years for non-insurance contracts and 15 years for insurance contracts.
Reverse solicitation	Available in the UK.	Available in respect of approaches from persons domiciled in the UK. The OPE and the exceptions to the FPO may also be of use in regard to unsolicited approaches from UK persons.	Reverse solicitation continues to be available in respect of approaches from persons domiciled in the UK. The OPE and the exceptions to the FPO overlap with the concept of reverse solicitation and may serve to give EU27 firms greater comfort. However, the FCA is no less keen to ensure that any reverse solicitation is genuine than ESMA and the EU27 NCAs.
Fly in, fly out for conducting business	Available in the UK.	The UK generally permits visa free business travel of up to 90 days in any 180 days, however, restrictions on undertaking regulated financial services activities should be taken into account.	EU27 financial services firms seeking to send staff to the UK on business should seek advice before doing so to ensure that their activities are permitted. Both the UK's general business travel rules and its restrictions on regulated financial services activities should be taken into account when planning business trips. Business travellers from EU27 financial services firms may be able to take advantage of the OPE rules, the exceptions to the FPO and any future equivalence findings under Title VII MiFIR.

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Our Brexit tracker

Our Financial Services Brexit tracker "[Helping you through changing times – Our European Brexit tracker for financial services institutions](#)" provides a quick overview of the current position in relation to UK funds and UK fund managers seeking to sell services into EU27 countries after Brexit.



How Eversheds Sutherland can help

If you need help assessing how Brexit may affect your firm, we are able to help. Our lawyers and consultants have advised various institutions passporting into the UK from EU27 Member States and passporting from the UK into the EU27 on Brexit planning and Brexit related issues. We would be happy to discuss how we can help you with your Brexit planning, the execution of those plans and the communication with your clients about the effect of your plans upon them. For further guidance on the impact on your business, please get in touch.

To find out more on the implications of Brexit on your business, visit our [Brexit hub](#).

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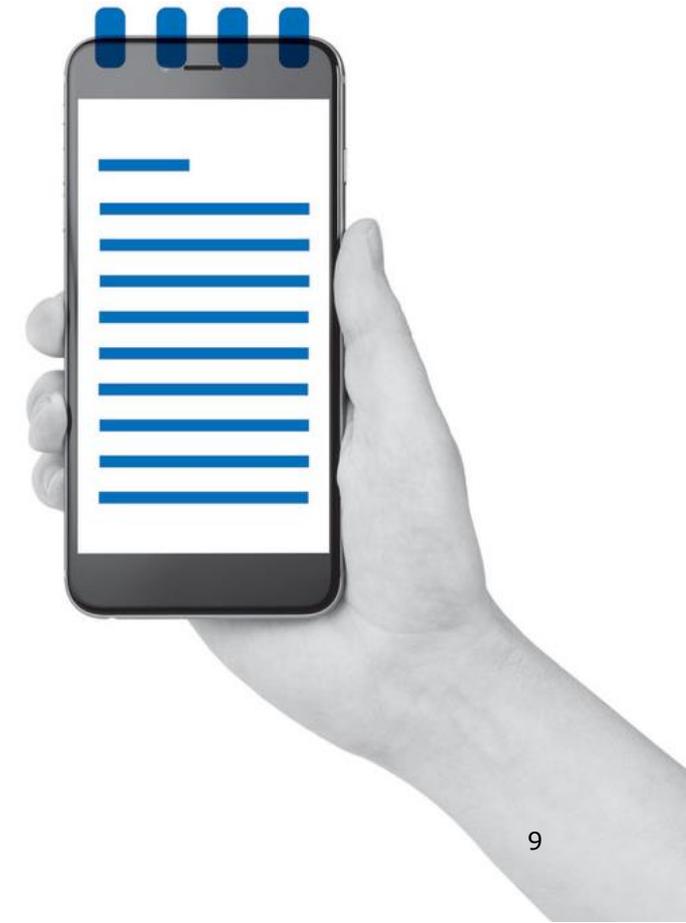
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This information is for guidance only and should not be regarded as a substitute for research or taking legal advice.

February 2021 | LON_LIB1\24261864\1